

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PULTE HOMES, INC.,

Plaintiff/Counter-Defendant,

CIVIL ACTION NO. 09-CV-11616

vs.

DISTRICT JUDGE MARIANNE O. BATTANI

AMERICAN GUARANTEE,
AND LIABILITY INSURANCE
COMPANY,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant/Counter-Plaintiff.

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART AMERICAN
GUARANTEE AND LIABILITY INSURANCE COMPANY'S MOTION TO COMPEL
DISCOVERY FROM PULTE HOMES, INC. (DOCKET NO. 59)**

This matter comes before the Court on American Guarantee And Liability Insurance Company's Motion To Compel Discovery From Pulte Homes, Inc. filed on October 19, 2010. (Docket no. 59). Plaintiff filed a Response in Opposition on November 5, 2010. (Docket no. 66). Defendant filed a Reply Brief on November 15, 2010. (Docket no. 68). The parties filed a Joint Statement of Resolved and Unresolved Issues on December 13, 2010. (Docket no. 71). This matter was referred to the undersigned for hearing and determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 61). The Court heard oral argument on this matter on December 20, 2010. The matter is ready for ruling.

On April 12, 2010 Defendant served on Plaintiff its First Set of Interrogatories, Requests For Admission and Requests for Production of Documents. On June 1, 2010 Plaintiff served responses and objections. Correspondence ensued between the parties. On July 30, 2010 Plaintiff served supplemental answers, responses and objections to some of the discovery. Defendant brings this

motion to compel full and complete responses to discovery. The issues which remained unresolved at the time of the hearing are Interrogatory Nos. 6 and 9 and Request for Production Nos. 9, 38, 39 and 86¹.

For the reasons set forth on the record at the hearing the Court ordered the following:

- A. Plaintiff will serve amended responses to Interrogatory Nos. 6 and 9, which topics go to the heart of this case. *See In re Continental Capital Inv. Services, Inc.*, 2009 WL 1661918 at *5 (Bankr. N.D. Ohio 2009);
- B. Plaintiff will amend its responses to Request for Production Nos. 9, 38 and 39 to comply with Fed. R. Civ. P. 34(b)(2)(B) and (E) to state whether it has produced all documents within its possession, custody or control, to produce the responsive documents and, to the extent privilege is claimed, to produce a privilege log in compliance with Fed. R. Civ. P. 26(b)(5)(A); and
- C. Plaintiff will amend its response to Request for Production No. 86 to state whether the relevant topic, allocation, was at issue or discussed at trial.

IT IS THEREFORE ORDERED that Defendant American Guarantee And Liability Insurance Company's Motion To Compel Discovery From Pulte Homes, Inc. (Docket no. 59) is GRANTED in part and DENIED in part as set forth herein and on the record and Plaintiff will serve amended responses and answers within thirty (30) days of entry of this Order.

IT IS FURTHER ORDERED that Defendant's request for attorneys fees and costs is DENIED. Fed. R. Civ. P. 37(a)(5)(A)(ii), (iii).

¹Defendant also alleged in its motion that after Defendant had noticed depositions, Plaintiff revealed on September 22, 2010 that there were approximately 30,000 pages of additional documents, which Plaintiff produced on October 1, 2010. In its motion Defendant alleged that it may need to re-depose some individuals regarding the additional documents. At the hearing, Defendant's counsel confirmed that Defendant is not seeking to re-depose anyone based on this production.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: January 3, 2011

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: January 3, 2011

s/ Lisa C. Bartlett
Case Manager